

W4



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,531	01/29/2004	Wayne E. Vick	45626/284122	5370

23370 7590 02/14/2006

JOHN S. PRATT, ESQ  
 KILPATRICK STOCKTON, LLP  
 1100 PEACHTREE STREET  
 ATLANTA, GA 30309

EXAMINER

BRITTAIN, JAMES R

ART UNIT	PAPER NUMBER
----------	--------------

3677

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/767,531	Applicant(s) VICK, WAYNE E.	
	Examiner James R. Brittain	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2005.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 20-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10032005</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 20-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 20 introduces the term “system” that is included in the first line of each dependent claim. The claim construction mixes product limitations and process limitations so that the “system” is of ambiguous scope. The claim is now unclear whether the scope of the claim is the strap comprising a first layer and a patch attached to the strap or the scope includes when the user actually attaches the patch to the strap that is required to occur prior to installation around the freight. Further, with respect to claim 28 the use of the term “system” renders this claim further unclear because it is not known whether the scope of the claim is the patch being continuous with the first layer or the scope includes when the patch is formed during the process of manufacturing the first layer. The remaining claims are indefinite because they depend from indefinite claims.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3677

Claims 20, 24-26 and 28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bullock (US 6089802).

Bullock (figures 3-6) teaches a strap for restraining freight with a first layer having adhesive 30 coating the layer and on a side of the strap considered to be the outer surface and is inherently securable to a surface of a transportation device. The end of the strap is considered to be the separate patch that is a continuous portion of the first layer and formed during the process of manufacturing the first layer as indicated by applicant in claim 28. Applicant provides no discriminant in the claim to distinguish the separate patch and claim 28 specifically states “the patch is a continuous portion of the first layer and formed during the process of manufacturing the first layer” so the choice of the end of the strap that is continuous with the first layer being the separate patch as indicated in this rejection fully meets applicant’s claim construction. The patch, as defined, has an adhesive layer located on its entirety so as to meet the language of claim 25.

Claims 20 and 24-27 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Blatt (US 4264251).

Blatt (figure 3) teaches a strap for restraining freight with a first layer of adhesive tape secured by adhesive to a second layer of adhesive tape at their ends. The two layers are clearly joined. Since the joining of the two layers is by adhesive, claim 27 is anticipated. The second layer is considered a separate patch. Applicant provides no discriminant in the claim to distinguish the separate patch so the choice of a second layer as indicated in this rejection fully meets applicant’s claim construction. Claim 20 only requires two layers of tape joined together and Blatt shows such structure.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-23 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bullock (US 6089802) in view of Epstein (US 6478229).

Bullock (figures 3-6) teaches a strap for restraining freight with a first layer having adhesive 30 coating the layer and on a side of the strap considered to be the outer surface and is inherently securable to a surface of a transportation device. The end of the strap is considered to be the separate patch that is a continuous portion of the first layer and formed during the process of manufacturing the first layer. Applicant provides no discriminant in the claim to distinguish the separate patch and so the choice the end of the strap that is continuous with the first layer being the separate patch as indicated in this rejection fully meets applicant's claim construction. The difference is that the layer is not stated as being a nonwoven fabric. It would have been obvious to utilize a nonwoven fabric as a layer in the strap of Bullock in view of Epstein (figure 1) teaching that it is desirable to utilize a non-woven fabric 8 in the construction of a multi-layered bundling strap so as to provide it with greater strength. As to the elongation and creep characteristics of claim 23, these parameters are simply a matter of adjusting the strength of the strap and Epstein recognizes the desirability of controlling the mechanical properties of the strap. As to claim 29, Epstein teaches the use of a non-woven layer that is for reinforcement.

***Response to Arguments***

Art Unit: 3677

Applicant's arguments filed November 22, 2005 have been fully considered but they are not persuasive. Applicant argues that the "patch" identified above in the references of Blatt and Bullock is not "separate" from the strap. However, applicant has clearly chosen a claim construction that includes the patch being a continuous portion of the first layer and formed during the process of manufacturing the first layer. This is explicitly claimed in claim 28 and was pointed out in the previous office action as being the basis for the claim construction. The addition of the term "separate" does not change the patch being formed continuous with the first layer. Applicant provides no discriminant in the claims to distinguish over the applications of the art as applied above in fact the claims are written to read very tightly on the applied art and claim 28 is the prime example, wherein all that is claimed is a strap with a first layer that is continuous, in other words almost any continuous strap, belt or webbing. Applicant utilizes the open-ended term "comprising" at three locations in claim 20, thereby clearly indicating that other structure can be included in the scope of the claim and the application of the art is fully within the scope of the breadth of the claims. Applicant's claims are extremely broad. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., there is a separate joining medium between two distinct structures, one being the strap and the other being the patch) is only recited in claim 27 and this claim is rejected over Blatt as indicated above, wherein there is basically two pieces of tape secured end to end by a lap joint. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

Art Unit: 3677

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

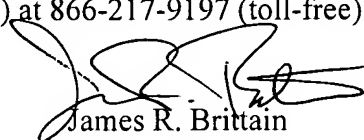
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3677

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'James R. Brittain', is written over the printed name.

James R. Brittain  
Primary Examiner  
Art Unit 3677

JRB